

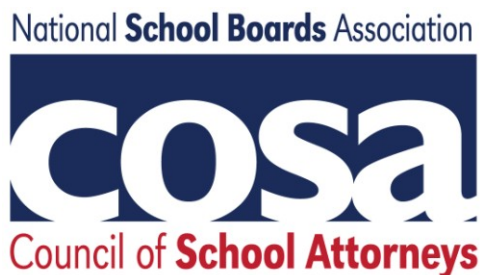
# Collective Bargaining and the Negotiation Process: A Primer for School Board Negotiators

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April 3-5, 2014

2014 School Law Seminar  
New Orleans, Louisiana



This primer provides an overview of state laws governing collective bargaining between boards of education and school employee associations. It also describes how the parties typically prepare for and conduct negotiations and provides guidance on effective bargaining practices.

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## I. OVERVIEW

This primer provides an overview of laws governing collective bargaining between boards of education and school employee associations. It also provides background and guidance on the collective bargaining process—how the parties prepare for and conduct negotiations within the laws governing collective bargaining. Any description of this subject must emphasize that public school collective bargaining is governed by state law, not federal, and thus the collective bargaining laws in your state must be analyzed before fully informed decisions can be made on a collective bargaining issue. Similarly, the negotiation process, while normally left to the parties and governed by law, is often the product of local practice and custom. The background and recommendations on the negotiation process should be used to inform decision making, but your jurisdiction’s historical practices should be considered as well.

## II. COLLECTIVE BARGAINING LAWS

### A. Unit Representation—Units and Unions

Collective bargaining laws group employees into specified categories for negotiation purposes. Typically, teachers and other employees holding state education certificates are grouped into one category; administrators are grouped into a separate category; and support or classified employees are grouped into yet another category.<sup>1</sup> These categories are called “units.” The members of the unit, e.g., the teachers, may then decide, through an election process,<sup>2</sup> if they want their unit to be represented by a professional organization, i.e., a “union.” The National Education Association (NEA) and the American Federation of Teachers (AFT) are the two national teacher unions. This process is referred to as affiliation. For example, the Howard County Education Association (the local association representing teachers and other certificated employees in Howard County, Maryland) is affiliated with the Maryland State Educators Association (representing teachers in Maryland at the state level) and also with the NEA. A portion (approximately 70%) of the association dues that Howard County teachers pay the Howard County Education Association goes to the Maryland State Educators Association and the NEA. In return for these

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<sup>1</sup> E.g., CAL. GOV’T CODE § 3545 (2014); CONN. GEN. STAT. ANN. § 10-153b (2014).

<sup>2</sup> E.g., CONN. GEN. STAT. ANN. § 153b(d) (2014); ALASKA STAT. § 23.40.100 (2014); OHIO REV. CODE ANN. § 4117.07 (2014).

dues, the local association receives benefits and services, including the allocation of professional staff to assist the local association in collective bargaining and grievances.

Each state specifies which units are allowed and their composition.<sup>3</sup> Some states permit teachers and administrators to be in the same unit, while some prohibit them from being in the same unit because of an administrator's duties to manage and evaluate teachers.<sup>4</sup> Rarely are certificated employees in the same local unit as support or classified employees,<sup>5</sup> although they may both be affiliated with the same state and national organizations based on their respective elections of a bargaining representative. In Oregon, for instance, state law prohibits teachers and classified employees from being included in the same unit except in very small district<sup>6</sup> and entirely excludes from coverage of the collective bargaining law any supervisory employee.<sup>7</sup>

While the state statute will establish the basic criteria for the units, sometimes it is not clear where a particular position should be classified. For example, should nurses, social workers, and family liaisons be classified with the certificated unit or with the support employee unit? Likewise, most states require or permit a school board to exempt senior management positions from any unit, i.e. exempt them from collective bargaining.<sup>8</sup> The dividing line between exempt and non-exempt positions, for collective bargaining purposes, can be unclear at times. This process, of assigning specific positions to particular units and declaring certain positions exempt, is called "unit classification." In many states the board of education undertakes the unit classification process,<sup>9</sup> with varying degrees of involvement by the local employee associations, but in some states the determination is made by a state labor board.<sup>10</sup> Consult state law to determine the process, and the school board's authority.

## **B. The Duty to Negotiate in Good Faith**

A school board's obligation to negotiate in good faith is the *sine qua non* of collective bargaining. Failing to do so may subject the school board to an unfair labor practice charge. In Oregon, the basic requirements for bargaining in good faith are set forth in the statute,<sup>11</sup> but decades of interpretation by the Oregon Employment Relations Board and the state appellate courts have fleshed out those requirements. For

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<sup>3</sup> 16 V.S.A. § 1991 (2014); CAL. GOV'T CODE § 3545 (2014); CONN. GEN. STAT. ANN. § 10-153b (2014); DEL. CODE ANN. 14 § 4010 (2014); MD. EDUC. CODE §§ 6-401, 6-404, 6-501, 6-505 (2014).

<sup>4</sup> CAL. GOV'T CODE § 3545.

<sup>5</sup> *Id.*

<sup>6</sup> OR. REV. STAT. § 243.650(1) (2014).

<sup>7</sup> OR. REV. STAT. § 243.650(23) (2014).

<sup>8</sup> CAL. GOV'T CODE § 3543.4 (2014).

<sup>9</sup> MD. EDUC. CODE § 6-404, 6-505 (2014).

<sup>10</sup> OR. REV. STAT. § 243.682 (2014); OHIO REV. CODE ANN. § 4117.16 (2014); WASH. REV. CODE ANN. § 41.59.080 (2014).

<sup>11</sup> OR. REV. STAT. § 243.650(4) (2014).

instance, in Oregon the duty to provide information is a significant component of the duty to bargain in good faith.

The basic elements of the duty to negotiate in good faith are for each party to:

1. Meet at all reasonable times and places.
2. Bargain over mandatory subjects of bargaining, including salary, wages, hours, and other terms and conditions of employment, until an agreement or impasse is reached.
3. Bargain with the intention of reaching an agreement, also described as making best efforts to consider and respond to proposals made by the other party.
4. Endeavor to agree on an effective bargaining process.
5. Respect the role of the exclusive representative by not seeking to bargain directly with the employees represented by the unit.
6. Not do anything to undermine the bargaining process or the authority of the other's representative.
7. Make every reasonable effort to conclude negotiations with a final written agreement in a timely manner.
8. Reduce to writing the matters agreed on as a result of the negotiations.
9. Honor and administer existing agreements.
10. Not unilaterally change a term of employment that is a mandatory subject of bargaining while a valid collective bargaining agreement is in effect, and while the parties are bargaining but have not yet reached an impasse.

The duty to negotiate in good faith does *not* mean that a party is compelled to make a proposal, to agree to a proposal, or to make a concession. Good faith bargaining does not preclude “Hard bargaining”—taking a strong position on an issue.

Examples of bad faith bargaining (or a violation of the good faith duty) are surface bargaining (meeting and merely going through the motions of negotiations with no intent of reaching an agreement), a “take-it-or-leave-it” position, refusing to meet, delaying meetings, or failing to give the chief negotiator sufficient authority to make agreements.

Although the “good faith” focus is often on the school board, it is important to keep in mind that it is an obligation imposed on both parties.

## C. Scope of Bargaining

Scope of bargaining refers to the topics that the parties will negotiate, and it is determined by state law. There are hundreds of potential topics, ranging from subjects that are of fundamental importance to employees, such as salaries and health benefits, to matters that greatly impact a school board's instructional program, budget, or administrative prerogatives. Examples from the latter category include class size, curriculum, assignment of teachers, and teacher dismissal. The law typically classifies all possible bargaining subjects into three categories:

1. Mandatory subjects of bargaining—subjects that the parties must negotiate, under the principles of good faith.
2. Illegal subjects of bargaining—subjects that the parties are prevented from negotiating, by law, typically because they fundamentally concern powers reserved to the school board or would undermine the authority of state law.
3. Permissive subjects of bargaining—subjects that the parties are not obligated to negotiate, but which they may if both sides agree. Agreeing to negotiate a permissive subject does not mean the parties must reach an agreement on the matter.

Where particular topics fall within this categorization is based on state statutes as interpreted by a state administrative agency or the judiciary. Some states use a “laundry list” approach—enumerating by statute the classification of each subject. Other state statutes use general descriptions, which get applied to specific topics in scope of bargaining challenges adjudicated by a state administrative agency or the courts, and thus the categorization is developed by case law. When statutes establish bargaining rights by general language, such as the duty to negotiate “salary, wages, hours, and other terms and conditions of employment,” most of the scope of bargaining litigation concerns applying the “other terms and conditions of employment” clause to specific topics.

Regardless of the process for classifying topics, the underlying issue is also the tension between an employee's right to bargain the terms and conditions of employment and the unilateral authority that a school board must retain to fulfill its legal duties to the citizens and remain accountable for the effective delivery of educational services in the jurisdiction.

In some states, courts have ruled that a permissive category may only exist if the legislature has expressly authorized collective bargaining on permissive topics. In *Montgomery County Educ. Ass'n v. Board of Educ. of Montgomery County*,<sup>12</sup> the court ruled that when school boards engage in collective bargaining, they are exercising delegated authority from the legislature, and have only such authority as has been delegated. Therefore, in the absence of express statutory authority to negotiate permissive topics, any such negotiation is illegal and void as a matter of law.<sup>13</sup> Oregon's collective bargaining law identifies permissive

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<sup>12</sup> 311 Md. 303, 534 A.2d 980 (1987).

<sup>13</sup> In 2010, Maryland enacted a provision, contain in the Fairness in Negotiations Act, allowing permissive bargaining. MD. EDUC. CODE § 6-408(5) (2014).

topics by specifically excluding them from “employment relations” subjects that must be bargained, either by subject category or by virtue of past agency decisions. The statute also provides that new subjects, not previously categorized by agency decision, will be permissive if the Employment Relations Board determines they “have a greater impact on management’s prerogative than on employee wages, hours, or other terms and conditions of employment.”<sup>14</sup> This so-called “balancing test” is used in a number of states to identify mandatory versus permissive subjects as challenges are raised on new subjects for bargaining.

#### **D. Impasse**

When the parties do not reach an agreement, they are at impasse and must go through a state mandated impasse proceeding. While the mechanics of the process will vary by state, most state procedures provide for the involvement of a neutral party to help the school board and employee organization reach an agreement. The neutral party may be an individual (such as a professional arbitrator) or a state administrative agency (such as a labor board). The most important issue is whether the neutral party has the power to make binding decisions, i.e., impose a settlement on the parties, or merely the authority to make recommendations to the parties, with the final decision being made by the school board if no agreement is reached. When the neutral party has the authority to impose settlement terms, risks to the school board obviously increase, putting pressure on the board to accept the association’s demands.

#### **E. Employee Strikes**

Some states permit school employees to go on strike to express their dissatisfaction with labor negotiations.<sup>15</sup> Other states prohibit strikes<sup>16</sup> because of the disruption they cause to essential public services, and impose penalties<sup>17</sup> on teachers and/or employee organizations that organize a strike. The ability to strike can be a powerful bargaining tactic, but must be used wisely so as not to anger parents and the community. In Oregon, the labor unit is legally free to strike, but only after concluding a process of 150 days of “table bargaining,” mediation, submission of final offers for public information, and a 30-day “cooling off” process, and then only after giving 10 days prior notice of a date certain for the strike.<sup>18</sup> Other bargaining unit members must cross the picket line of a legally striking unit.<sup>19</sup> However, the school board has its own “self-help” remedy if negotiations drag on and the processes described above have been met: the school board may unilaterally implement its final offer, upon at least five days’ notice to the union.

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<sup>14</sup> OR. REV. STAT. § 243.650(7)(c) (2014).

<sup>15</sup> *E.g.*, ALASKA STAT. § 23.40.200 (2014); OR. REV. STAT. § 243.726 (2014); OHIO REV. CODE ANN. § 4117.14 (D)(2) (2014); 115 IL. COMP. STAT. 5/13 (2014).

<sup>16</sup> *E.g.*, DEL. CODE ANN. 14 § 4016 (2014); FLA. STAT. § 447.505 (2014); IND. CODE § 4-15-17-8 (2014); MD. EDUC. CODE § 6-410 (2014); WIS. STAT. § 11.89 (2014).

<sup>17</sup> *E.g.*, VA. CODE ANN. § 40.1-55 (2014) (striking public employees are deemed terminated); MD. EDUC. CODE § 6-410 (2014) (organization that organizes a strike shall have its representation status revoked for two years and the school board shall suspend payroll dues deductions for one year).

<sup>18</sup> OR. REV. STAT. § 243.712-.726 (2014).

<sup>19</sup> OR. REV. STAT. § 243.732 (2014).

### III. THE BARGAINING PROCESS

#### A. Preparing to Bargain

Effective bargaining for school boards requires good preparation. You should begin your preparation at least 2 months before your first meeting with the school board, and 3 months before your first table session with the employees' association. Allow sufficient time to achieve the following tasks before the first meeting with the school board:

1. Survey administrators for recommendations for contract changes to management's benefit.
2. Review the past year's grievances and union issues to identify potential union proposals.
3. Prepare a bargaining notebook for board members, the superintendent, and the district negotiating team members containing relevant background information such as:
  - a. District's recent history of increment and cost of living adjustment (COLA) increases;
  - b. Recent COLA and increment increases from competitive districts;
  - c. The current consumer price index (CPI) or other inflationary measures;
  - d. District's salary rankings, particularly at step one on the bachelor's scale (for recruiting purposes);
  - e. Revenue projections from all usable sources;
  - f. Cost to provide unit members an increment, and the percentage of unit members eligible for an increment;
  - g. Cost to provide unit members with a 1% COLA;
  - h. Health benefit information (costs, comparison to other districts); and
  - i. Position, step and salary scale placement, and extra-curricular positions held by members of the union's negotiating team.
4. Meet with the superintendent to obtain his/her negotiation goals, desired language changes, and salary/benefit recommendations for the school board.
5. Prepare a recommended board bargaining team based on the expected issues and obtain board approval. The team membership will vary based on the unit involved in negotiations. A chief negotiator will never have served in all the positions represented by employee associations in

bargaining. If the chief negotiator lacks experience in one of the unit's key positions, it is critical that at least one team member does, so the team can "talk the walk."

6. After the board approves the negotiating team, meet with the team, provide training as necessary, and discuss roles and responsibilities.
7. Find out if the superintendent would like the school board to receive training. Periodic training is very helpful to ensuring that the board members understand their role and the bargaining process.
8. Consider an initial meeting with the employees' association chief negotiator to identify significant issues.
9. Prepare recommended parameters for the school board on all salary, language, and benefit issues, and meet with the superintendent for revisions/approval on the recommendations to go to the board.
10. Although sometimes a school board will want to authorize very specific parameters, negotiations work best when the chief negotiator is given a general parameter by the board and can exercise discretion within it, e.g., a parameter of 4% total salary instead of a specific distribution scheme, a parameter for an annual performance evaluation rather than specific evaluation domains, a parameter that the superintendent may reassign staff instead of enumerated criteria.

## **B. Selecting the Bargaining Team**

There are no legal requirements or restrictions as to who can be on an employer's bargaining team. Typically, the following issues need to be considered in determining who will represent the school board's interests at the bargaining table:

1. Will board members be on the team?

It is relatively common in K-12 bargaining to have board members be part of the official bargaining team, but it varies by jurisdiction and the preference of the board in any given year. The board should consider whether members have the time necessary to commit to bargaining, and whether the board's need to be kept apprised of bargaining can be satisfied through some other mechanism, such as frequent updates from the bargaining team. Also, any board member agreeing to be on the negotiating team should understand that he/she becomes an unstated "power figure" to whom the union will direct their attention. This can erode the authority of the chief negotiator, place the board member in some uncomfortable situations, and occasionally cause friction among the other board members.

2. Will the board use an outside spokesperson?

Many school boards choose to utilize an outside spokesperson, especially if there is no in-house person who has the time to devote to heading up the bargaining team or the experience to ensure that the



board meets its legal obligations. Outside consultants also can bring perspective as to what is going on state-wide in the area of bargaining.

3. What are the roles of the various team members?

Even if there is an outside spokesperson, it is wise to identify a board employee who will be the point person with respect to bargaining. There should also be a discussion regarding the various responsibilities of team members—Who is going to be responsible for drafting proposals? Who is responsible for communicating with the association regarding bargaining-related matters? Who will be coordinating communication with other stakeholders, including rank and file members and the board?

4. Do we have individuals at the table with the necessary information and expertise?

An outside spokesperson will not necessarily be well versed on the day-to-day operational details of the school system. Having supervisors/administrators who have developed working relationships with employees and association staff and who understand the issues facing the board will not only facilitate conversation, it often limits the number of overbroad claims that are sometimes made by association team members at the table.

### **C. When should bargaining start?**

1. Is there contractual language that governs the subject?

Many contracts contain provisions that dictate when notice must be given in order to initiate bargaining. Other agreements actually contain a date certain by which bargaining must begin. The chief negotiator should review the contract to determine whether any such requirements are present.

2. Is there state law that governs the subject?

Some states proscribe the bargaining timelines by statute. Either by express law or budgetary practicality, the bargaining process should be finalized in time for the financial aspects to be incorporated into the school board's adopted budget for the respective fiscal year, which means backward mapping the negotiation process to ensure sufficient time for "good faith negotiations" prior to the board's budget adoption.

3. When can you get the employees' association to the table?

Of course, even when the board wants to get to the bargaining table early, it cannot necessarily force the association to share in that goal. In many respects, the question of when bargaining will start will depend on when the association is willing to start. Only an extreme delay on either management's or an association's part would serve as the basis of a valid bad faith bargaining unfair labor practice charge.

### **D. Gathering information**

Before a bargaining team can draft proposals, it needs to collect information to illuminate the changes that are needed from the current agreement.

1. Have supervisors review the contract and comment on issues they have noticed, or areas where practice does not meet the contractual language.
2. Review any grievances or threatened grievances that have occurred since the last time the contract was bargained to determine whether language needs to be changed or clarified.
3. Obtain comparative information from similarly situated school systems if deemed necessary, to determine relative economic situation.
4. Consider a legal review of the contract to identify any areas in which the current language conflicts with changes in the law or best practices.
5. Have the business office review the contract and provide information regarding financial parameters and budget expectations.
6. Understand the school system's expenditure posture and what will compete with compensation and benefit dollars, e.g., fixed costs, planned programmatic improvements, etc.
7. Meet with the superintendent to get final approval on all proposals to be submitted to the board.

#### **E. What process should be used?**

There are two primary bargaining processes used in public sector bargaining: the so-called traditional method and the "interest-based" process (also known as "collaborative" or "alternative" bargaining). Local tweaks are often made to either of these models, resulting in a slightly different process. The traditional process is the default process that is used unless there is mutual agreement to utilize an alternative process. Before entertaining the idea of using interest-based bargaining, or one of its spin offs, a board should consider a number of factors, including the current labor-management climate, the need for a timely resolution, and the amount of change that needs to be made from the current agreement. The current economic climate will also impact a decision to use non-traditional bargaining. Again, the association would have to agree to use a different model, and full group training is recommended to ensure that everyone is on the same page from a process standpoint.

#### **F. Developing a communication plan**

One of the most important pre-bargaining activities is determining how the board will communicate with a number of groups, including the board, administrators, rank and file bargaining unit members, the press and the public. State law must be reviewed to determine any limits on the school board's ability to communicate with the bargaining members about negotiations. Many states allow the board to communicate directly with the bargaining unit, so long as there is no direct bargaining. Where communication is prohibited, the school board (or spokesperson) may always communicate to the public and media outlets, which provides a limited means of supplying employees with updates.

Communicating directly with the bargaining unit can be a key step in the bargaining process. Often, members do not get the full or accurate picture of bargaining from their own team. This is true even to the point that rank and file members often come to the administration to find out what their own team is proposing at the table. A communication plan should strive to do the following:

1. Initiate communication early in the bargaining process instead of waiting until a crisis point, when management communications may be viewed with skepticism.
2. Establish regular, routine communication with unit members of a factual nature.
3. Utilize the format and delivery method most likely to reach the widest audience.
4. Avoid any ground rules or other agreements to limit communication during the bargaining process.
5. Accurately describe the proposals made by both teams, as well as the impact of the teams' proposals.

### **G. Getting parameters from the board**

1. Parameters from the board on management's proposals.

Ultimately, the board sets the direction for bargaining with input from the superintendent, chief negotiator, key administrators and advisors. Especially on economic subjects, the board needs an opportunity to make its wishes known. Typically this will involve the setting of parameters on financial components of the contract, including the total amount of dollars available to settle the contract. These parameters should be coordinated closely with the business office to ensure accuracy. With respect to language, it is generally not the board's responsibility to draft proposals or "word-smith," although board members should alert the bargaining team of any language issues that are of particular importance.

2. Parameters from the board on the association's proposals.

The board also reviews the association's proposals and, based on staff recommendations, provides parameters on each. Sometimes an association's proposal will be so extreme that it minimizes or trivializes a real issue. This can make the chief negotiator's job more difficult. When the association offers an extreme proposal, the board often scoffs at the terms, making it hard for the negotiator to get the board to look seriously at a counter-offer. It is important for the chief negotiator and board to realize that the association often faces internal pressure—from members, association officers, or key members—to include bargaining proposals. What the association formally presents is very often substantially different from what it will accept, and sometimes fails to present the issue accurately. But it often falls to the board's negotiator to clarify and make sense of association proposals, in the interest of understanding the real issue and getting a contract.

## H. The Board's Role and Responsibilities

It is the board's job to establish the financial and language parameters, and the chief negotiator's job to be the spokesperson, get a contract within those parameters, and finalize language that serves and protects the board's interests. To some degree this structure mirrors the board/superintendent relationship, where the board is responsible for policy and the superintendent for implementation. In an effective environment, the board and individual board members will:

1. Not interfere with the bargaining process.
2. Treat all information and parameters as highly confidential.
3. Not discuss any negotiating topic or position with a unit member or association staff member.
4. Support the chief negotiator and the positions he/she takes at the table. Understand that it is a common tactic for the association to blame the chief negotiator when they don't like the board's position. ("If we could just get rid of John we could get a contract.")
5. Understand that the union will try to "work" a board member, either to gain confidential information or a favorable vote on the board.
6. Respect all board positions as the position of the board, no matter the vote or how the individual board member voted.
7. Not make side deals with the union.

## I. Team Member Roles

A lot goes on at the negotiations table, and it's good to assign roles and responsibilities to team members. One of the most important is note-taker. Written notes, capturing the parties' purpose, intent, and understanding, made contemporaneously with the discussions, can be very valuable in future grievances or other challenges to contract terms. The chief negotiator will typically not be able to take adequate notes while negotiating, so a note-taker should be designated. The chief negotiator must be sure to review and correct as necessary the notes before they are filed. Other team members should be asked to watch the association team for reactions. Not everyone has a "poker-face." Depending on the chief negotiator's approach and the issue, the chief negotiator may want team members to take the lead on presenting an issue or work in sub-committees with members of the association's team.

## J. Drafting Contract Language

Take your time and review proposed and contemplated contract language carefully. The entire team and administrators who have worked in the department or with the particular subject matter should review it. Of course, consult with an experienced attorney if necessary. Contract language should be clear and unambiguous and not subject to any unintended interpretations. Program staff can help with this.

Quite often the association will want brief language, and will deride attempts to add specificity, with mollifying expressions of “we all know what’s intended.” Do not accept brief language, when it’s vague or general, even under the pressure of getting an agreement. It’s an association tactic. Vague language and terms are always to the association’s advantage, because it provides an opening to argue later for a much more favorable interpretation to school administrators, hearing officers, and arbitrators. The history of negotiations is filled with examples of language agreed to at the last minute or under pressure that is later interpreted by an arbitrator with unintended and damaging consequences.

## **K. The End Game, and the End Run**

### **I. The End Game**

Throughout the process, the parties will be reaching tentative agreement on some items and withdrawing other items. As tentative agreements are reached, the chief negotiators should sign off on those agreements, with a written understanding that any and all tentative agreements are contingent upon a final contract being reached on all terms. A common way to reach tentative agreements is to bundle various proposals, and resolve them through a combination of agreements and withdrawals. Sometimes, the only thing a school board gets in return for a concession is the association’s agreement to withdraw other demands. As negotiations draw to a close, the chief negotiator must ferret out the association’s key issues and try to resolve them either through contract changes or off-the-table agreements. An off-the-table agreement, a commitment to explore something or make an administrative change, can be an effective way to address association issues without the binding contract language that comes when the provision is added to a collective bargaining agreement. If an agreement cannot be reached within the school board’s parameters, the chief negotiator, working with the superintendent, will have to decide whether to seek additional authority from the board. The board should not be asked to modify its parameters, however, unless the chief negotiator can assure the board that it will get a contract in return. In other words, do not ask for increased authority unless it is certain to seal the deal. Conversely, if the chief negotiator and superintendent decide not to ask for a change in parameters, they should inform the board of the risks of impasse by holding to the original parameters. It is the chief negotiator’s job to find out very specifically what final terms are necessary to get an agreement with the association, and to create a workable settlement package.

### **2. The End Run**

The chief negotiator, superintendent, board, and senior employees need to be aware of the last minute end run, a very common union tactic. The union’s team will work in earnest with the board’s team to negotiate the best deal they can. Then, before finally signing off, their negotiator or president will go to a board member, superintendent, or other influential individual and say “We’re *almost there*, we just need this little thing—can you help us/talk to the board so we don’t lose everything?” It’s a no loss strategy for the union—if it doesn’t work, the union hasn’t lost anything. But the strategy plays on the fear of a board member or superintendent that a contract will be held up by a minor issue and their ego as someone who can “save the day.” The appropriate response in this situation is to tell the individual that the chief negotiator is the only board spokesperson and that they must follow the process.

## L. Comparing the Board's Decision-making Process and the Association's Process

The school board and the association often use completely different processes as they make final negotiation decisions. A school board's process is usually "top down:" the board itself makes the decisions, which are then carried out by staff. An association often operates, as a practical matter, under a "bottom up" approach: association negotiating team members make the decisions and then, in what is usually merely a *pro forma* process, obtain approvals from the association's board of directors and members. The association's decision-making process at the crucial last stages of negotiations can sometimes be frustrating for new board negotiators because it allows for individual association team members, their personalities, and their personal interests to assume an importance that might not be shared by the entire association membership.

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